HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION Nos.19596 and 19601 OF 2007

WP.No.19596 of 2007

Between:

S.Venkateswara Rao

. . .Petitioner

AND

Government of Andhra Pradesh and others

. . .Respondents

WP.No.19601 of 2007

Between:

Y.Nageswara Rao

. . .Petitioner

AND

Government of Andhra Pradesh and others

. . .Respondents

:: COMMON ORDER ::

Counsel for the petitioners : Shri Ch.Dhanamjaya

Counsel for the respondents : Government Pleader for Revenue

4th October, 2007

Per G.S.SINGHVI, CJ

These petitions have been placed before the Division Bench in furtherance of order dated 14.9.2007 passed by the learned Single Judge who, on finding that the view taken by him on the interpretation of Sections 4, 4-A and 4-B of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') is at variance with the view expressed by the coordinate Bench in **Bodugu Purnachandrasekhara Rao v. Government of Andhra Pradesh**[1], opined that the matter deserves to be decided by a Division Bench.

The Facts:

Writ Petition No.19596 of 2007

Petitioner – S. Venkateswara Rao claims to have purchased land measuring Ac.2-42 cts. in Survey No.241/2 of Karugorumilli Village, Achanta Mandal, West Godavari District from one Narasimha Murthy. By an order dated 27.5.2004, Mandal Revenue Officer, Achanta (now Tahsildar, Achanta) declared the sale transaction to be void on the ground of violation of the provisions of the Act. The first and second appeals filed by the petitioner against the order of the Mandal Revenue Officer were dismissed by Revenue Divisional Officer, Narsapur and Joint Collector, West Godavari, Eluru respectively vide their orders dated 5.2.2005 and 21.5.2007. The appellant then filed revision before the State Government and prayed for restoration of the land. During the pendency of the revision petition, the State Government issued Memo No.41998/Asn.VI/2007-1, dated 05.9.2007 and directed the Collector, West Godavari District to keep the subject land at the disposal of the concerned Tahsildar without re-assigning the same to the original assignee and/or other landless poor persons.

The petitioner filed Writ Petition No.19596 of 2007 challenging the direction contained in Memo dated 05.9.2007 on the ground violation of the rules of natural justice and arbitrary exercise of power.

The learned Single Judge entertained a doubt about the maintainability of the second appeal, but, keeping in view the judgment of another learned Single Judge in **Bodugu Purchandrasekhara Rao v. Government of Andhra Pradesh** (supra), he referred the matter to the Division Bench by making the following observations:

> "7. A perusal of Section 4-A(1) goes to show that against the order passed by MRO under Section 4 (1) of the Act an appeal lies to the RDO within 90 days and against order passed by RDO under Section 4 (1) an appeal lies to the District Collector under Section 4-A (2) of the Act. In the instant case, admittedly the order was passed by the MRO, therefore, an appeal was rightly preferred before the RDO; as such, under Section 4-A (2) there cannot be any second appeal against the order passed by RDO, as the RDO passed order under Section 4-A (1) but not under Section 4 (1) of the Act. Revision lies under Section 4-B to the District Collector against the order of the RDO passed under Section 4-A (2) of the Act. Revision lies to the Government against the order passed by the Collector under Section 4-A (2) of the Act. Therefore, I am of the opinion that no second appeal lies and there is only one appeal provided against the original order and against the appellate order only one revision lies. When the original order has been passed by MRO an appeal lies to RDO and revision lies to District Collector and if the original order is passed by RDO an appeal lies to the District Collector and revision lies to the Government under Section 4-B of the Act.
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> 8. Therefore, the view taken by my learned Brother Justice V.V.S. Rao in the aforesaid judgment is different than the view taken by me in this case. Hence, I deem it appropriate to refer the matter to the Division Bench in order to have authoritative pronouncement in the matter."

Writ Petition No.19601 of 2007

Petitioner – Y. Nageswara Rao claims to have purchased land measuring Ac.2-00 comprised in Revenue Survey No.241/6 situated at Karugorumilli Village, Achanta Mandal, West Godavari District from one Narasimha Murthy. By an order dated 20.5.2005, Mandal Revenue Officer, Achanta declared the sale transaction as void on the ground of violation of the provisions contained in the Act. The appeal preferred by the petitioner was dismissed by the Appellate Authority and Revenue Divisional Officer, Narsapur vide his order dated 5.2.2007 and the second appeal was dismissed by Joint Collector, West Godavari at Eluru vide order dated 21.5.2007.

The petitioner then filed revision before the State Government. During the pendency of the revision, the State Government vide Memo No.41999/Assn.VI/2007-1, dated 6.9.2007 directed Collector, West Godavari District to keep the subject land at the disposal of the Tahsildar, Achanta without re-assigning the same to the original assignee and/or other landless poor persons. The petitioner challenged Memo dated 6.9.2007 in Writ Petition No.19601 of 2007, which has been referred by the learned Single Judge to the Division Bench.

Before proceeding further, we consider it proper to mention that both the petitioners had earlier jointly filed Writ Petition No. 9399 of 2004 for quashing order dated 27.5.2004 passed by the Mandal Revenue Officer. The same was disposed of by the learned Single Judge on 18.1.2005 by directing the appellate authority to decide the pending appeal, as expeditiously as possible, preferably within a period of three months and directed that till then order dated 27.5.2004 shall not be given effect to. Thereafter, the petitioners filed Writ Petition No. 11196 and 11197 of 2005 questioning order dated 28.4.2005 passed by the Joint Collector whereby he vacated the

orders of the status quo passed on 2.3.2005. Both the writ petitions were disposed of by the learned Single Judge by common order dated 26.10.2006 by ordering status quo with a direction to the Joint Collector to dispose of revision petitions within a period of two weeks. In furtherance of that direction, the orders impugned in these petitions were passed by the Joint Collector.

We have heard Shri Ch.Dhanamjaya, learned counsel for the petitioners and the learned Government Pleader for Revenue.

Sections 4, 4-A and 4-B of the Act, which calls for interpretation by the Division Bench, read as under:

4. Consequences of breach of provisions of Section 3:-

(1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order –

(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonable practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor persons in accordance with the rules for the time being;

Provided that the assigned land shall not be restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the government for assignment to any other landless poor person.

(2) Any order passed in Revision under Section 4-B and subject to such order, the decision in appeal under Section 4-A and subject to the said orders in Revision and Appeal, any order passed under sub-section (i) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any Court in respect of any

proceedings taken or about to be taken by any officer or authority or Government in pursuance of any powers conferred by or under this Act.

(3) For the purposes of this Section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3.

4-A. Appeal: -

(1) Any person aggrieved by an order passed by the Mandal Revenue Officer under sub-section (1) of Section 4, may, within ninety days from the date of receipt by him of such order appeal to the Revenue Divisional Officer.

(2) Any person aggrieved by an order passed by the Revenue Divisional Officer under sub-section (1) of Section 4 may, within ninety days from the date of receipt by him of such order appeal to the District Collector.

4-B. Revision: -

(1) The District Collector may in respect of any proceeding not being a proceeding covered by sub-section (2) of Section 4-A on an application made to him and the Government may in respect of any proceedings either *suo motu* or on an application made to them, call for and examine the record of any officer subordinate to him or them to satisfy himself or themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order taken or passed therein, and if in any case, it appears to the District Collector or as the case may be to the Government that any such decision or order should be modified, annulled, reversed or remitted for re-consideration, they may pass orders accordingly:

Provided that every application for the exercise of powers under this section shall be preferred within ninety days from the date on which the proceeding decision or order to which the application relates was communicated to the applicant.

(2) No order adversely affecting any person shall be passed under sub-section (1), unless such person has been given an opportunity of making his representation.

(3) The District Collector or the Government as the case may be, may also suspend the execution of the decision or order pending exercise of their power under sub-section (1).

In **Bodugu Purnachandrasekhara Rao**'s case (supra), the learned Single Judge adverted to the provisions of Section 4 (1), 4-A and 4-B and held:

> "A plain reading of the above two provisions would show that (1) whenever a person is aggrieved by an order passed by Mandal Revenue Officer (MRO) under section 4 (1) of the Act resuming the land to the Government, an appeal would lie to the Revenue Divisional Officer (RDO) having jurisdiction; (2) If an adverse order is passed by the appellate authority, aggrieved person can prefer further appeal to the District collector (Joint Collector) within ninety days from the date of receipt of copy of the order of the first appellate authority; and (3) Even after the order of the Joint Collector, an aggrieved person can make an application to the Government for revision, when the government can examine the regularity, correctness, legality or propriety of the order passed by the Joint Collector or by any other authority subordinate to the Government. The Commissioner of Land Revenue or any other authority has not been conferred with any revisional jurisdiction against the order of the Joint Collector. The legal position is not seriously disputed or denied."

In our opinion, the above reproduced interpretation of Section 4-A runs contrary to the plain language of the statute insofar as it has been held that the person aggrieved by the appellate order of the Revenue Divisional Officer can file further appeal to the District Collector (Joint Collector) within 90 days from the date of receipt of such order. A conjoint reading of Section 4 (1) and (2) of the Act makes it clear that an officer of the rank of District Collector or any other officer not below the rank of Mandal Revenue Officer can decide

an application filed in the matter of violation of Section 3(1) of the Act. In terms of sub-section (1) of Section 4-A of the Act, an appeal lies to the Revenue Divisional Officer if order under Section 4(1) is passed by an officer of the rank of Mandal Revenue Officer. If the order is passed by the Revenue Divisional Officer under Section 4(1) of the Act, then the appeal lies to the District Collector. There is no provision for further appeal against the order passed by the Revenue Divisional Officer under Section 4-A (1) or District Collector under Section 4-A (2) of the Act and the only remedy available to the aggrieved person is to file revision under Section 4-B (1) of the Act.

In view of the above, we agree with the referring Judge that there is no provision for second appeal against an appellate order passed under Section 4-A (1) or (2) of the Act and hold that the contrary opinion expressed by the learned Single Judge in **Bodugu Purnachandrasekhara Rao**'s case (supra) does not lay down correct law.

On the merits of the case, we find that the revision filed by the petitioners is still pending consideration and, therefore, there is no reason for this Court to interfere with innocuous Memos dated 05.9.2007 and 06.9.2007 issued by the State Government.

In the result, the writ petitions are dismissed.

G.S.SINGHVI, CJ

4th October, 2007

C.V.NAGARJUNA REDDY, J

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[1] 2006(6) ALD 418